

the use of a different decoder throughout the entire system.

E. It is understood that Apollo is concurrently entering into a separate agreement with GTEC regarding the financial impact on Apollo as a result of the replacement of the decoders Apollo has installed or has in inventory as a result of the System change.

F. The parties agree that Apollo's essential business objective and economic expectation in the Lease is the provision of Video Programming to its customers in the City. The parties further agree that the decoders are an integral element of the System, of which the ownership and future commercial use (other than the provision of Video Programming) are essential business objectives and economic expectations of GTEC. It is also agreed that the most efficient way of accomplishing the desired decoder exchange is for GTEC to provide and own all of the decoders (and related wiring and other materials) to be installed in the System. The parties agree that such an approach provides greater flexibility for the testing of new communications technologies as contemplated in paragraph 18 of the Lease, and is not intended to change Apollo's control over, or essential economic expectations of, its provision of Video Programming as set forth in the Cable Communications Policy Act of 1984 and in Apollo's franchise with the City of Cerritos. This

requires certain amendments and modifications to the Lease. The purpose of this agreement is to express such modifications to the Lease.

G. GTEC and Apollo desire that the Lease remain and continue in effect, but further desire that the Lease be amended, ratified and confirmed as herein provided.

NOW THEREFORE the parties hereby agree as follows:

1. Exhibit C to the initial Lease is hereby modified to delete all reference to "decoders" or "converter boxes". Henceforth, the decoders (converter boxes) and the related wiring and other materials shall be deemed to be a part of the System and will be the property of GTEC. The parties further agree to enter into a separate agreement which will specify the terms and provisions under which Apollo will be reimbursed for its costs (including labor and materials) for the wiring of the structures in which the decoders are to be installed and for the performance of certain other services such as the connection of the telephone interface module of the decoders to the telephone network.

2. Within a reasonable time following: (i) the required System changes; (ii) the execution of this Agreement; and, (iii) the agreement with GTEC referred to in recital paragraph E; Apollo hereby agrees to commence replacement of the existing decoders installed in homes in the City with decoders provided by GTEC. In addition, Apollo agrees to

install such decoders provided by GTEC for all installations in the System, at no cost to GTEC other than the reimbursement for wiring the structures in which the decoders are installed pursuant to the separate agreement referred to in paragraph 1.

3. GTEC agrees to provide Apollo with a quantity of decoders, as specified by Apollo, to meet Apollo's ongoing service requirements, as well as those decoders needed to replace existing inventory and installed decoders. Apollo's duty to commence the replacement of the existing decoders installed on the System shall not arise until GTEC provides Apollo with replacement decoders.

4. The parties understand that GTEC's involvement in the new Video services made possible by replacement of decoders is subject to regulatory and judicial review, and, if GTEC's involvement is disallowed, this may require further revision of the Lease and this modification. The parties agree to negotiate any further modifications in good faith. Such negotiations shall be based on the essential business objectives and economic expectations of the parties as specified in Recital paragraph F and, with reference to the decoders, on the principle of relative commercial utility of the decoder to each party.

5. Apollo agrees that one half of GTEC's reasonably incurred costs of acquiring all decoders for initial, but not subsequent replacement, installation in the System (including

one half of the reimbursement for wiring the structures in which the decoders are installed pursuant to the separate agreement referred to paragraph 1) shall be included in the "Owner's Recoverable Construction Cost", as that phrase is defined in Exhibit B to the initial Lease. In the event GTEC is subsequently requested to incorporate in the System a decoder with different capabilities that is more expensive than the currently specified decoder, the parties agree to negotiate responsibility for any additional cost that may be incurred in good faith.

6. That paragraph 5, found at page 3 of the Lease shall now read as follows:

Option to Renew Lease. Owner hereby grants Lessee an option to renew this Lease coextensive with any extensions granted by the City of Cerritos to Lessee pursuant to the CATV Contract referred to in paragraph 4, at a reasonable market rent that includes any future investments in the System and/or operational costs needed to continue the level of service quality required by the City and the FCC.

7. (a) GTEC agrees not to compete with Apollo, or any permitted successor or assignee, in the provision of Video Programming in the City during the term of the lease (including any extensions thereof not in excess of seven (7)

years beyond the initial term).

(b) Provided, however, that GTEC shall not be prevented by subsection (a) from complying, as a carrier, with any access obligations to video programmers imposed on it by the FCC, other regulatory bodies, or the courts.

8. To delete paragraph 21 of the Lease and to substitute the following in lieu thereof:

"21. Increase in Bandwidth Capacity or Utilization of Other Portions of the System for the Transmission of CATV Signals.

(a) Owner agrees that if bandwidth capacity in the Coaxial facilities in excess of 275 MHz should become available, Lessee, or its successor, is hereby granted a right of first refusal to the use of any such increase in capacity at the then reasonable market rent for such bandwidth.

(b) Owner further agrees that if bandwidth capacity in its Fiber Network Facilities (as that term is defined in the lease agreement between GTEC and GTEC dated May 26, 1988): (i) is available for the commercial--as opposed to the initially experimental--provision of Video Programming in the City; and, (ii) such capacity is offered by Owner to any other party for the purpose of commercially providing Video Programming; then in such event, Lessee, or its successor, is hereby granted a right of first refusal to the partial use of any such portion of the Fiber Network

Facilities that is available for the provision of Video Programming at the then reasonable market rent for such bandwidth. Provided, however, that the right shall not extend to more bandwidth than is represented by the total of: (i) Apollo's current usage of Coaxial System bandwidth; and, (ii) amounts of Fiber Network Facilities bandwidth offered to other parties for Video Programming.

(c) In the event Lessee switches all or a portion of its Video Programming to any of Owner's facilities other than the coaxial facilities, the parties agree to negotiate in good faith the rescheduling of the rent to be paid by the Lessee for the initial term of the Lease based upon the essential business objectives and economic expectations of the parties as specified in Recital paragraph F to Amendment No. 2 to this Lease.

(d) Owner agrees not to lease any portion of the System for the purpose of providing Video Programming to another party at a rental rate that is less than the reasonable market rent offered by Owner to Lessee pursuant to the rights of first refusal specified in subparagraphs (a) and (b) of this paragraph 21."

9. The Lease as amended shall, in all respects, remain in full force and effect without modification or revision except to the extent and in the manner herein specifically provided.

IN WITNESS WHEREOF, the parties hereto have executed
this Agreement as of the dates indicated below.

OWNER

GTE California Incorporated

By _____

DATED: _____, 1989

Attest:

KENNETH K. OKEL
Assistant Secretary

LESSEE

Apollo Cablevision, Inc.

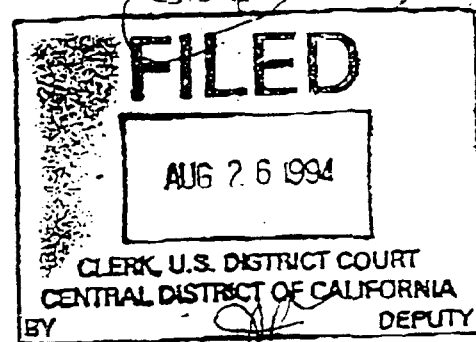
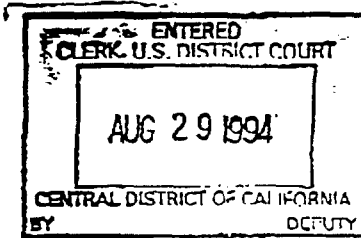
By Tom Roland President

DATED: 6/19/89, 1989

Attest:

Guyon H Bishop
Corporate Secretary

102/D001



11 UNITED STATES DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA

13 APOLLO CABLEVISION, INC.,
14 Plaintiff,
15 v.
16 GTE CALIFORNIA, INC., et al.,
17 Defendants.

18 CV 94-2929 SVW (EEx)
19 ORDER GRANTING PLAINTIFF'S
20 MOTION TO REMAND AND
21 DENYING FEDERAL COMMUNICATION
22 COMMISSION'S MOTION TO DISMISS

23 Pending before this Court are two motions, a motion by Plaintiff
24 Apollo Cablevision, Inc. ("Apollo") to remand this matter to state
25 court and a motion by the Federal Communications Commission ("FCC") to
26 dismiss the action. The Court has determined that the FCC's motion
27 will be denied and that Apollo's motion will be granted.

28 Apollo filed its complaint in state court. Defendant GTE
California, Inc. ("GTE") removed the matter to this Court. The
dispute underlying the complaint is, in all relevant respects,
identical to the dispute underlying GTE California, Inc. v. Apollo
Cablevision, Inc., et al., CV 94-2689 SVW (EEx). In that matter, this
Court granted Apollo's motion to dismiss due to lack of federal
jurisdiction. For the reason's set forth in the Court's AMENDED ORDER

1 GRANTING MOTION TO DISMISS BY APOLLO CABLEVISION AND GRANTING MOTION
2 TO DISMISS BY FEDERAL COMMUNICATIONS COMMISSION AND GRANTING MOTION TO
3 DISMISS BY DEFENDANT CITY OF CERRITOS in CV 94-2689, the present
4 dispute also lacks federal subject matter jurisdiction. The Court
5 hereby incorporates the analysis of that order into this order. The
6 only federal issue is a defense to the state law complaint.
7 Therefore, there is no federal jurisdiction.

8 The FCC has intervened in this matter so that it may argue that
9 the appropriate action for this court is not to remand but to dismiss.
10 The FCC contends that the Apollo-GTE dispute is within the exclusive
11 jurisdiction of the FCC and that a remand to a state court that is
12 utterly without power to address the dispute is unnecessary. While
13 the Ninth Circuit has recognized a "futility" exception to the
14 apparently mandatory "shall remand" language of 28 U.S.C. § 1447(c),
15 Bell v. City of Kellogg, 922 F.2d 1418, 1424-1425 (9th Cir. 1991), the
16 Court concludes that it is not certain that plaintiff's case would be
17 entirely futile on remand.

18 The present complaint contends that GTE has breached its contract
19 with Apollo. GTE has stated that it intends to offer as a defense
20 that the FCC has decided to regulate the GTE-Apollo relationship, that
21 GTE is legally obligated to follow the FCC's directives and/or that
22 Apollo has contractually agreed to follow the FCC's directives.
23 Apollo acknowledges that it cannot contest the validity or legality of
24 the FCC's orders in this Court or in the state courts. Apollo's
25 Opposition Brief, pp. 3:6-11, 6:19-21. Review of the FCC's decisions
26 must first be challenged through the FCC's administrative procedures
27 and then through the Court of Appeals. Since Apollo does not seek to
28 challenge the legality or validity of any FCC order, the cases cited

1 by the FCC are readily distinguishable. See Telecommunications
2 Research and Action Center v. FCC, 750 F.2d 70 (D.C. Cir. 1984)
3 (plaintiff unsuccessfully attempts to obtain district order directing
4 FCC to act on certain unresolved matters); Public Utility Comm'r of
5 Oregon v. Bonneville Power Admin., 767 F.2d 622 (9th Cir. 1985)
6 (plaintiff cannot indirectly challenge FCC decisions through district
7 court).

8 The present case involves a contract dispute, the FCC's decision
9 is relevant insofar as the FCC's decision impacts the rates
10 established under the parties' contract. The present case is not a
11 veiled attack on the FCC's rate-setting. In the proceedings before
12 the state court, Apollo must accept the validity of the FCC's orders.
13 Furthermore, an argument can certainly be made that the FCC's exercise
14 of jurisdiction precludes the plaintiff from obtaining the relief
15 presently sought by plaintiff in state court, i.e., the determination
16 of a fair-market rate.

17 However, the Court is unable to conclude that plaintiff will not
18 be able to structure a viable complaint within these restrictions that
19 would state a cause of action for breach of contract. It is clear
20 that some contract claims between an FCC licensee and third parties
21 are not precluded by related FCC action. See Regents of the
22 University of Georgia v. Carroll, 338 U.S. 586, 70 S. Ct. 370, 371,
23 375-376, 378 (1950) (state may enforce contract that FCC required
24 licensee to repudiate in order to maintain license) (contract dispute
25 between licensee and third party is outside FCC's jurisdiction).
26 Since some claim may be possible, this Court which lacks jurisdiction
27 over this subject matter will not dismiss the complaint.

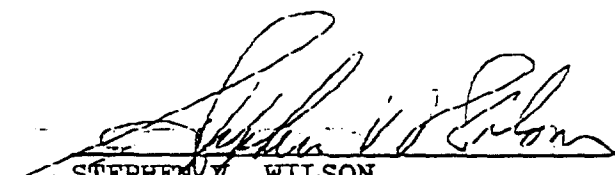
28 On remand, the state court may consider summarily determining

1 that Apollo has contractually agreed to be bound by the rates
2 established by the FCC. Alternatively, the state court may consider
3 staying this matter until the FCC rate-setting process is completed
4 and has been reviewed on appeal. See City of Peoria v. General
5 Electric Cablevision Corp., 690 F.2d 116, 120-122 (7th Cir. 1982)
6 (discussing extent to which FCC's jurisdiction preempts state law
7 claims and question of whether a stay should be issued). Perhaps, the
8 state court will choose an entirely different path. In any event,
9 such decisions are committed to the discretion of another court, not
10 this one.

11 THE COURT HEREBY ORDERS THAT THE FCC'S MOTION TO DISMISS IS
12 DENIED. THE COURT FURTHER ORDERS THAT APOLLO'S MOTION TO REMAND IS
13 GRANTED. THE COURT ORDERS THIS MATTER REMANDED BACK TO THE SUPERIOR
14 COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF VENTURA,
15 VENTURA COUNTY SUPERIOR COURT CASE NO. CIV 142800. The address of the
16 Ventura County Superior Court is Ventura County Superior Court, Hall
17 of Justice, 800 S. Victoria Avenue, Ventura, CA 93009-0001.

18 IT IS SO ORDERED.

19
20 DATED: August 25, 1984

21 
22 STEPHEN W. WILSON
23 UNITED STATES DISTRICT JUDGE
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DECLARATION OF VIRGINIA K. SHEFFIELD
(28 U.S.C. § 1746; 47 C.F.R. § 1.16)

Virginia K. Sheffield declares under penalty of perjury as follows:

1. I am Director-Regulatory Matters for GTE Telephone Operations. In that capacity, I have supervisory responsibility for compliance by both GTE California Incorporated (GTECA), formerly known as General Telephone Company of California, and GTE Service Corporation (GTESC), in connection with the operation of the existing cable television system in Cerritos, California. I make this declaration in support of GTECA's motion for a stay pending judicial review of the Memorandum Opinion and Order (Order), FCC 93-488, released on November 9, 1993, by the Federal Communications Commission (Commission). I have personal knowledge of the facts set forth in this declaration, and, if called as a witness to testify in this matter, could testify thereto under oath.

2. As Director-Regulatory Matters, I direct the development and the preparation of GTE Telephone Operations' positions before federal agencies and the courts on business, regulatory, and strategic issues. I also serve on the United States Telephone Association's New Services and Technologies Issues Subcommittee and am Chairperson of the Michigan State University Institute of Public Utilities Advisory Board and Executive Committee. I have held several related positions since my initial employment with GTE in March 1986, including most recently Director-Regulatory Policy. Before joining GTE, I was employed by the Iowa State Commerce

Commission as Director-Rates Research and Policy, and then as Director-Telecommunications Policy. I have also worked for the Iowa Legislative Fiscal Bureau, a non-partisan agency of the Iowa General Assembly. I hold B.S. and M.S. degrees from Iowa State University and have completed Ph.D. course work and qualifying exams, also at Iowa State. I have served as a Lecturer at Drake University and a Research Assistant/Instructor at Iowa State University. I have given numerous presentations, papers, and publications, most of which have focused on federal, state, and local regulation of telephone companies and other regulated entities.

3. My education, my background as a regulator, and my work since coming to GTE have given me familiarity with the regulatory process in general and with FCC regulation in particular. In addition, my position as Director-Regulatory Matters at GTE requires me to understand and further GTE's business interests, objectives, and strategies while ensuring that GTE is in compliance with federal regulatory decisions and rules. For these reasons, I am well qualified to evaluate and to discuss the options available to GTECA if the November 9 decision of the Commission is not stayed and takes effect or, conversely, if it is stayed or reversed.

4. Pursuant to a waiver and Section 214 operating authority (47 U.S.C. § 214, 47 C.F.R. §§ 63.04, 63.54) previously granted by the Commission for the provision of cable television in Cerritos, California, GTECA and GTESC have entered into various arrangements with Apollo Cablevision, Inc. ("Apollo") related to video services

to customers in Cerritos, California, one of GTECA's franchised local telephone service areas. In particular:

a. T. L. Robak, Inc., the corporate parent of Apollo, designed and built the transmission facilities for the Cerritos project for GTECA. Apollo is the franchised cable operator of commercial cable television service in Cerritos, using 39 of the 78 channels in the system for such service. The construction contract between Apollo's corporate parent and GTECA has been deemed to be a contractual relationship that creates a prohibited "affiliation" between the telephone company (GTECA) and the provider of video programming (Apollo) under so-called "Note 1," i.e., 47 C.F.R. § 63.54, Note 1(a) (1991), recodified, 47 C.F.R. § 63.54(c) (1992). Construction of the system is now complete, however, and the contract between Robak and GTECA for construction of the system is no longer in effect. Nevertheless, the Commission has held in the November 9 Order that the terminated Robak relationship requires the Commission to rescind the original rule waiver in its entirety (§ 15).

b. The 39 channels GTECA currently leases to Apollo have been paid for on a contract basis, and not under a common carrier tariff filed under Section 214. Facilities usage under this contract relationship has been validated by the waivers and authorizations previously granted by the Commission. However, now that the Commission has rescinded those previous grants of authority, a contract carrier relationship between GTECA and Apollo--in addition to failing to comply with § 63.01 of the Commission's Rules enforcing Section 214--would also be deemed by

the FCC to be an "affiliation" under § 63.54(c) of its Rules that would violate 47 U.S.C. § 533(b)(1).

c. Under contract with GTECA, Apollo performs the maintenance on the entire 78-channel system. Under the rationale of § 63.54(c), this maintenance contract would constitute an affiliation and violate § 533(b)(1) if it were to continue after the rescission of the waiver takes effect.

d. The 39 channels not used in Apollo's cable television system are instead used by GTESC under contract with GTECA, as part of a Commission-approved technology and marketing experiment involving video, voice and data services. These constitute the cable television experiment that the Commission has described as "the heart of the Cerritos project." November 9 Order ¶ 15. Both the Commission (Cerritos Order, 4 FCC Rcd 5693, ¶¶ 44, 48-50 (1989); November 9 Order ¶ 15) and the United States Court of Appeals for the District of Columbia Circuit (National Cable Television Association v. FCC, 914 F.2d 285, 289 (1990)) have recognized that it serves the public interest to allow GTESC to provide this service on an experimental basis. GTESC's experimental activities in Cerritos would, but for the waiver, have violated the Commission's Rules, and would be violations if they were to continue after the rescission of the waiver takes effect, in two distinct respects:

(1) GTESC's service offerings on all 39 of its channels are not delivered to customers directly, but are instead delivered to Apollo's customers through a service contract with Apollo. This relationship between GTESC and Apollo also exceeds

that permitted by the FCC under § 63.54(c). Nine of the 39 channels are devoted to interactive services and other information services that do not constitute video programming. Nevertheless, even as to those channels, GTE's use of Apollo as a means to reach its customers is a contractual arrangement that results in a prohibited affiliation between the telephone company and the provider of video programming in Cerritos.

(2) The bulk of the 39-channel capacity used by GTE, 30 channels, is devoted to "Center Screen". Center Screen is GTE's name for the near-video-on-demand service ("NVOD") service that is currently available to cable subscribers in Cerritos. In its November 9 Order, however, the Commission determined to rescind in its entirety the waiver and the Section 214 operating authority previously granted to GTECA for the Cerritos project. The Commission has regarded the Center Screen NVOD service as "video programming" even though the waiver it granted with respect to NVOD was "narrowly tailored" and precluded GTESC from selecting the content delivered to customers by Center Screen. GTE also owns an interest in Center Screen that exceeds the *de minimis* investment that Commission Rules permit telephone companies to have in providers of video programming. Therefore, GTECA will be in violation of Commission Rules, as interpreted by the Commission, if Center Screen continues to be offered to customers in Cerritos after the waiver rescission takes effect--whether or not offered by GTECA, and whether or not offered through Apollo. Indeed, every service offering by GTESC in Cerritos will have to be analyzed, if the Commission's Order goes into effect, to determine whether such offering constitutes "impermissible" video programming, other "permissible" programming, or some "severable" combination of the two classifications of programming.

5. The November 9 Order (¶ 17) declines at this time to determine a specific means by which GTECA is to come into compliance

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with Commission Rules and 47 U.S.C. § 533(b), but it specifically orders GTECA to file a compliance plan within 30 days (by December 9), including any necessary requests for approval by the Commission, and to achieve complete compliance within 120 days (by March 9, 1994).

6. The November 9 Order (§ 17) mentions four specific possibilities for achieving compliance: (a) GTECA could divest the Cerritos facilities, (b) Apollo could be removed as the franchised cable operator in Cerritos, (c) GTECA could seek Section 214 authority to offer channel service, or (d) GTECA could seek Section 214 authority to offer video dialtone service.

7. GTECA has not made a final decision as to how it intends to achieve compliance, in the event that the November 9 Order takes effect by its own terms and is not earlier stayed or reversed. GTECA has, however, considered all of its available options within the context set forth in the November 9 Order. In each case, GTECA has either rejected the option, determined that it is incapable of effectuating the option, or determined that the option entails irreparable injury to GTECA, to Apollo, and to consumers.

8. GTECA has considered the option of divesting the Cerritos facilities. This option would entail irreparable injury.

a. The Commission has declined to order this remedy, and GTECA has determined that it is in its own best business interests to continue to own the broadband facility now in place in Cerritos, which was constructed to GTECA's specifications and at GTECA's expense, rather than to attempt to sell it under circumstances that would result in "fire sale" prices. Even if GTECA must comply with

the Commission's Rules in all respects in its operation of the facility (i.e., enter into "carrier-user" relationships only in transmitting cable signals over this facility), GTECA regards that option as preferable from a business standpoint to divesting the facility under regulatory duress.

b. Even if GTECA were to entertain seriously the prospect of divesting the Cerritos facilities, doing so in advance of judicial resolution of GTECA's challenge to the November 9 Order would result in irreparable injury to GTECA and to the public. If GTECA divested the facilities, judicial reversal of the Commission's decision could not undo that divestiture, because neither the court nor the Commission would have power to order the purchaser to return the facilities to GTECA. Moreover, as noted in paragraph 4.d.(2) above, Center Screen[■] cannot be offered to customers by anyone in GTECA's telephone service area if the Commission's rescission of the waiver takes effect and strict compliance with 47 U.S.C. § 533(b) and the Commission's Rules (as interpreted by the Commission) is required. The public would be harmed by the loss of this service, which has been consistently recognized to be in the public interest. Furthermore, because a product such as Center Screen[■] gains acceptance in the marketplace only gradually as customers get used to it, any loss of continuity in the offering of Center Screen[■] would likely destroy the possibility that this service offering could be successfully converted from an experimental to a commercially sustainable service.

9. GTECA has considered the possibility that Apollo might be precluded by the FCC from continuing as a user of GTECA's facilities in Cerritos or that Apollo might wish to voluntarily divest itself of its Cerritos operations. This possibility, however, is totally outside GTECA's control. In any event, substitution of another entity for Apollo would not result in compliance because it would not solve many of the problems discussed in paragraph 4 above. See Cerritos Order, 4 FCC Rcd 5693, ¶ 53 n.56 (1989) ("Under our rules, General requires a waiver to contract with any third party video programmer, including not only Apollo, but any programmer other than Apollo."). Furthermore, the substitution of a new franchisee would result in irreparable injury because a judicial reversal of the Commission's decision would not cause Apollo to be substituted back for the new franchisee.

10. GTECA is seriously considering the option of offering service on a channel basis as a common carrier. This is an unattractive option that would result in irreparable injury to GTECA, to Apollo, and to the public in several respects, however.

a. In order to become a common carrier offering service on a channel basis to Apollo, GTECA would be required to offer service on its facilities to Apollo under tariff rather than its current contract with Apollo. GTECA is, of course, willing to offer its facilities to Apollo under tariff, but the filing of such a tariff does not fully resolve issues raised by the Commission's rules or ensure compliance by GTECA, because of the maintenance provisions of that contract (see paragraph 4.c above), because of

the problems with operating as a contract carrier (see paragraph 4.b above), and because of other provisions in that contract that go beyond the "carrier-user" relationship permitted by § 63.54(c). GTECA has already been engaged in difficult discussions with Apollo over the terms on which a regulatory abrogation must take place. If the Commission's Order were allowed to take effect but ultimately reversed, it is at best uncertain that regulatory abrogation of existing business relationships could somehow be reversed at that later date, and it is certain that there would have to be another difficult contract negotiation, all to the detriment of both GTECA and Apollo.

b. Conversion by GTECA to channel service would do nothing to solve the problems associated with the 39 channels currently used by GTESC. See paragraph 4.d above. GTESC would no longer be able to offer any video programming services on those channels; instead, they would have to be made available on a common-carrier basis to Apollo or to whoever else might have municipal authority to use them for video programming. At worst, the channels would go dark, to the obvious detriment of the public as well as GTECA. That is a distinct possibility, because Apollo is currently taking the position in negotiations with GTECA that, without GTE-supplied programming, those channels are not commercially worth the amount of money that would need to be paid under a cost-justified tariff. At best, the channels would be used for new service offerings, with no history of consumer acceptance and without continuation of GTESC's provision of NVOD service. See paragraphs 4.d.(2) and 8.b above. Either way, both GTESC and the

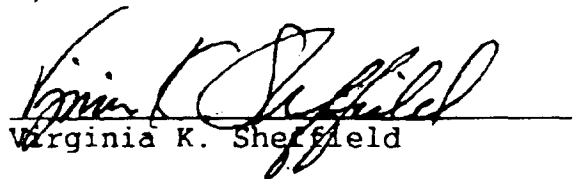
public would be demonstrably and irretrievably worse off than if the Commission's order were stayed in order to maintain the status quo pending judicial review.

11. GTECA is considering the possibility of offering service on a video dialtone basis. GTECA cannot, however, use the 39 channels over which Apollo currently provides its CATV service in Cerritos as part of a video dialtone platform without Apollo's affirmative decision to become a video dialtone customer. In lengthy discussions with Apollo, GTECA has received no information that Apollo favors such an option as being in its best commercial interest. Moreover, GTECA, unlike any other telephone company, would initiate any video dialtone service burdened with a presumption that its first video dialtone customer, Apollo, is an affiliate under 47 C.F.R. § 63.54(c), a rule that ordinarily is relaxed for video dialtone service. It is GTECA's current best judgment that technical problems--particularly those relating to meeting the Commission's enhanced service expectations with a system of only 39 channels in a municipality where only one cable operator has been franchised--and the unlikelihood of recovering the capital expenditures that would be needed for conversion to video dialtone under such circumstances make this an even less attractive option than channel service. Even if GTECA offered video dialtone service, however, the exact same irreparable injuries would occur as if GTECA offered channel service. GTECA's offering of video dialtone service would in no respect obviate the need for regulatory abrogation of the current contractual arrangement with Apollo. See paragraph 10.a above. Nor would a video dialtone operation aid in assuring that the 39 channels currently used by GTECA would not go dark, or allow GTECA (or anyone else) to offer Center Screen™. See paragraph 10.b.

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12. In summary, at the heart of the irreparable injury that would be caused if the Commission's Order is allowed to take effect is the 39 channels on which service is currently offered by GTESC--channels that have virtually nothing to do with the basis for the Commission's Order. If GTECA is required to come into compliance with the statute and the Commission's Rules (as interpreted by the Commission) within 120 days, it will be unable to take the knowledge gained from its five-year experiment in Cerritos, and all of the shareholder dollars spent on that experiment, and use that knowledge to continue current services or offer new services that it thinks, based on experience from the experiment, consumers would find more palatable. GTECA will have to take away the services it has been providing to the citizens of Cerritos for several years now. This will result in economic detriment to GTECA and to Apollo (through which GTECA provides those services), and consumer detriment to the citizens of Cerritos. GTECA's experiment was never intended to be permanent, but it was intended that the knowledge gained as a result of the test would lead to improved service offerings to consumers. That possibility will remain alive if the Commission's Order is stayed pending judicial review. It will be lost forever if the Commission's Order takes effect as scheduled.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 24, 1993.


Virginia K. Sheffield

